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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 5th August, 2016:—

I

BILL NO. XV OF 2016

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2016. Short title and commencement.

2. It shall come into force with immediate effect.

3. In the Eighth Schedule to the Constitution,— Amendment of the Eighth Schedule.

(*i*) The existing entries 9 to 21 shall be renumbered as entries 10 to 22 respectively and before entry 10 as so renumbered the following entry shall be inserted, namely:—

"9. Kodawa"

(*ii*) after entry 22 as so renumbered, the following entry shall be inserted, namely:—

"23. Tulu.";

(*iii*) entry 22 shall be renumbered as entry 24.

STATEMENT OF OBJECTS AND REASONS

The Eighth Schedule to the Constitution includes twenty-two languages as national languages which are widely spoken and written by our people. It is presumed that it is around these languages that the education, culture and intellectual pursuits of our people grow and flourish.

But two such languages seeking Constitutional recognition are "**Kodava"** language of Kodagu region of Karnataka and **"Tulu"** which is spoken by a large number of people in Udupi and South Canara Districts of Karnataka. There has been a long-standing demand from the Kodavas and above stated region to include their native languages in the Eighth Schedule to the Constitution.

Both of these languages fulfil all the criteria for inclusion in the Eighth Schedule to the Constitution. Kodava language has a great heritage and history which is widely spoken in the Kodagu region from where great soldiers of our nation like Field Marshal Cariappa and General Thimmaiah hailed and who grew up speaking Kodava language.

For the promotion of literacy and the development of these languages, it is necessary that they are included in the Eighth Schedule to the Constitution.

Hence, this Bill.

B.K. HARIPRASAD

II

BILL NO. XXII OF 2015

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Constitution (Amendment) Act, 2016.

Short title and commencement.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 338A of the Constitution, the following new article shall be inserted, namely:—

Insertion of new article 338B.

"338B. (*1*) There shall be a Commission for the Backward Classes to be the known as the National Commission for the Backward Classes.

National Commission for Backward Classes.

(*2*) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(*3*) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(*4*) The Commission shall have the power to regulate its own procedure.

(*5*) It shall be the duty of the Commission,—

(*a*) to investigate monitor all matters relating to the safeguards provided for the Backward Classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(*b*) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Backward Classes;

(*c*) to participate and advise on the planning process of socio-economic development of the Backward Classes and to evaluate the progress of their development under the Union and any State;

(*d*) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(*e*) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Backward Classes; and

(*f*) to discharge such other functions in relation to the protection, welfare and development and advancement of the Backward Classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(*6*) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(*7*) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(*8*) The Commission shall, while investigating any matter referred to in sub-clause (*a*) or inquiring into any complaint referred to in sub-clause (*b*) of clause (*5*), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any peson from any part of India and examining him on oath;

(*b*) requiring the discovery and production of any document;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copy thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses and documents;

(*f*) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Backward Classes."

STATEMENT OF OBJECTS AND REASONS

Under article 338 and 338A of the Constitution, the National Commission for the Scheduled Castes and the National Commission for Scheduled Tribes were established with the objective of monitoring all the safeguards provided for the Scheduled Castes and the Scheduled Tribes under the Constitution or other laws.

There are ample schemes and special provisions for the welfare of the Backward Classes in the country. However, there has not been any paradigm shift in their socio-economic conditions. In such a situation, need is being felt for a better and strong institutional system to put an end to their exploitation and ensure their overall development. There are provisions for the National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes in the Constitution. Similarly, there should be constitution status for the National Commission for the Backward Classes. The Parliamentary Committee on the Welfare of the Backward Classes in its first report (2012-2013) had also recommended for giving constitutional status to the National Commission for the Backward Classes.

The Bill, therefore, seeks to amend the Constitution with a view to provide constitutional status to the National Commission for Backward Classes.

B. K. HARIPRASAD

FINANCIAL MEMORANDUM

The Bill seeks to confer constitutional status to the National Commission for the Backward Classes set up as a permanent body in the year 1993 under the National Commission for Backward Classes Act, 1993. Therefore, the Bill, if enacted, is not likely to involve any recurring or non-recurring expenditure.

III

BILL NO. XXIII OF 2016

A Bill to provide for the right to privacy of personal data to all individuals in the country, establishing the liability of the organizations as well as the appropriate Government in case of misuse of such personal data of individuals, for creation of a National Do-Not-Disturb Registry to ensure that individuals are not harassed by organisations and creating awareness among individuals for protection of their personal data and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title, extent and commencement.

1. *(1)* This Act may be called the Right to Privacy of Personal Data Act, 2016.

(*2*) It extends to whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means in the case of a State, the Government of that State and in all other cases, the Central Government;

(*b*) "business contact information" means and includes individual's name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by individual solely for his personal purposes;

(*c*) "data subject" means an individual whose personal data is being processed;

(*d*) "individual" means a human being whether living or deceased;

(*e*) "intermediary" means an organisation which processes personal data on behalf of another organisation;

(*f*) "national interest" includes issues of national security, defence and conduct of international affairs;

(*g*) "organisation" includes any individual, company, intermediaries, contractors, association or body of persons, corporate or unincorporated,whether or not—

(*i*) formed or recognised under any law of the country; or

(*ii*) resident, or having registered office or a place of business in India.

Explanation.— Organisation shall also include Government Ministries, Departments and public funded Institutions at all levels.

(*h*) "personal data" means any data, whether true or not, about an individual who can be identified from that data and other information about an individual which any organisation has collected or is likely to have access to;

(*i*) "prescribed' means prescribed by rules made under this Act;

(*j*) "privacy risk" means the potential for personal data, on its own or when linked to other information about an individual, to cause emotional distress, or physical, financial, professional or any other harm to an individual;

(*k*) "processing of personal data" means taking any action regarding data that is linked to an individual or a specific device, including but not limited to collecting, retaining, disclosing, using, merging, linking, and combining data.

Right to Privacy of Personal Data.

3. (*1*) Every individual, whether he is citizen or not, shall have the right to privacy of personal data generated by him while staying legally within the country.

(*2*) Notwithstanding anything contained in any other law for the time being in force, no person shall process the personal data without the consent of the individual:

Provided that if the individual is deceased, after the commencement of the Act, this right shall pass on to his legal heir(s), as the case may be.

(*3*) Before taking the consent for processing of personal data every organisation shall provide the individual in concise and easily understandable language, accurate, clear, timely and conspicuous notice of its privacy and security practices.

(*4*) Every organisation shall provide convenient and reasonable access to such notice, in electronic, physical or any other feasible form, and any updates or modifications to such notice to the individual whose personal data is processed.

(*5*) After taking the consent, every organisation shall provide the individual with reasonable means to control the processing of personal data in proportion to the privacy risk to the individual.

Creation of a National Do-Not-Disturb Registry.

4. *(1)* The appropriate Government shall create a Registry to be named as National Do-Not-Disturb Registry where individuals living in the country can register themselves to restrict any sort of communication, in any form including but not restricted to receiving phone calls, messages, or mails.

(*2*) The appropriate Government shall take necessary measures to promote the National Do-Not-Disturb Registry and make the individuals aware of the same.

Creation and review of data requirement policy.

5. (*1*) All organisations shall create a data requirement policy, within three months of the commencement of the Act, and shall review the actual requirement of personal data of individuals on a peridical basis.

(*2*) The review of data requirement policy shall be updated on a yearly basis unless a need to update the same arises earlier for an organisation.

Creation of awareness of protection of personal data.

6. The appropriate Government shall take necessary measures for creation of awareness of protection of personal data among the persons living in the country.

Restrictions on right to privacy of personal data.

7. Notwithstanding anything contained in this Act, the right to privacy of personal data of the individual shall be restricted,—

(*a*) for matters of national security;

(*b*) to protect the life and health of an individual who is not able to express his consent;

(*c*) for the data of the individuals, deceased before the commencement of the Act;

(*d*) when an individual is acting in the course of his employment with an organisation; and

(*e*) for business contact information.

Guidelines for privacy of personal data.

8. (*1*) The appropriate Government, as and when required, shall issue guidelines for maintaining privacy of personal data.

(*2*) The guidelines shall be issued after due consultations with the concerned stakeholders.

Coordination within appropriate Government.

9. The appropriate Government shall take all measures to ensure effective coordination between services provided by concerned Ministries and Departments such as those dealing with Law, Home Affairs, Human Resource Development, Information and Technology, Information and Broadcasting, Defence, Corporate Affairs and External Affairs to address issues of privacy of personal data.

Establishment of National Research Centre for Excellence in Data Management.

10. *(1)* The Central Government may, by notification, establish for the purposes of this Act, a National Research Centre for Excellence in Data Management which shall conduct holistic research activities in the field of data management.

(2) The Central Government may, by notification, specify the headquarters of the Research Centre established by it under sub-section (*1*).

(3) The salary and allowances payable to and other terms and conditions of the officers and members of staff of the Research Centre shall be such as may be prescribed.

Compulsory education of privacy of personal data in educational institutions.

11. (*1*) On and from such date, as the appropriate Government may, by notification in the Official Gazette specify, the education of privacy of personal data in educational institutions shall be imparted compulsorily from such class onwards as may be prescribed by the appropriate Government.

(*2*) Subject to such rules, as may be prescribed, the appropriate Government shall

ensure appointment of such number of teachers with such qualifications, as may be specified, for teaching privacy of personal data in educational institutions.

Public Servants not to misuse access to personal data of citizens.

12. No public servant shall misuse the access to personal data or track the personal data of the individiual including the Members of Parliament, Members of Legislative Assembly or Council except for matters of national security.

Central Govenment to provide funds.

13. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide requisite funds for carrying out the purposes of this Act.

Penalty.

14. (*1*) Any organisation who directly or indirectly contravenes or attempts to contravene the provisions of this Act, shall be punished with imprisonment for a term which may extend to seven years or with fine up to fifty lakh rupees or with both.

(*2*) The penal provisions shall not apply to the individuals including the directors of the organisations who can prove their innocence with regard to the illegal data processing conducted in the organisation.

Payment of financial compensation to aggrieved individuals.

15. In cases where it is proved that the organisation has undertaken illegal personal data processing of individuals, the organisation shall be liable to pay ten times the revenues earned from such activities as compensation to the aggrieved individuals.

(*2*) In case the organisation is unable to pay such financial compensation, their assets shall be liable to be attached for this purpose.

Power to remove difficulties.

16. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

Act to have overriding effect.

17. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law the time being in force.

Power to make rules.

18. The Central Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Personal data refers to data, whether true or not, about an individual who can be identified from that data and other information to which any organisation has or is likely to have access. In the earlier times, personal data of citizens was confined to limited domains of Government records and paper documentation managed privately by citizens. However, India has witnessed a digital revolution at the cusp of the 21st century. The social and economic landscape of the country underwent a metamorphosis with the advent of technology. With this, the scope of personal data expounded exponentially. *According to data industry giant IBM website, nearly 90% of the total data in the world has been created in last two years alone.* A major portion of this personal data is generated through electronic medium chiefly through the means of internet. With the advent of cloud compouting, millions of terabytes of data get uploaded on the web on a daily basis.

In the past two decades, there has been a meteoric rise in promoting digital governance in the country and the same has been undertaken in the recent months under the Digital India Initiative. Digital provisions of governmental, banking and various other necessary services have given way to generation of millions of terabytes of sensitive citizen data in the country. There has been an upsurge in the use of e-Locker services (DigiLocker) provided by the Government and various cloud based storage applications for storing crucial personal data by the citizens. The marquee government program for digital identification of all its citizens (Aadhaar) is on its way of completing a universal coverage in the country.

With an array of governmental services being provided digitally to the citizens, there lies an imminent threat of unauthoried capturing and recording of personal data generated through the provisions of these services. With the meteoric rise of the Business Process Outsourcing (BPO) industry in the country, the demand for personal data of people is huge and in order to cater to the same, there has been a rise of a *data mafia* and an entire illegal industry has come up, worth thousands of crores which would provide personal details of citizens for profit-making purposes. Due to phenomenal penetration of smartphones in the country, there has been a rise in the application (Mobile App) culture and data generated on these applications has also increased significantly.

In such circumstances, it becomes extremely important to protect the personal data especially generated through electonic means belonging to the citizens in the country. Individual data of extremely sensitive nature such as retina scans, thumb imprints of millions of Indian citizens collected under Aadhaar need highest degree of safeguards especially when the same is collected by private Enrolment Agencies. The data captured under e-Locker and online storage programs need comprehensive security considering the invaluable nature of data stored in the same by the Indian citizens.

There is also an urgent need to create a broad, transparent and comprehensive framework to determine the liability of the organizations collecting, storing and maintaining the personal data of the user. There is a need to introduce a 'Review of Data Requirement Policy' to keep a check on the greed of organizations seeking more data for nefarious purposes. This policy must specifically differentiate the instances where the need is of mere identification of individuals and cases where specific personal data of the citizens is required. Despite having a Do-Not-Disturb (DND) Policy in place, the organizations have found loopholes within the same and the tele-marketing harassment of common and innocent citizens in the country continues. There is a need to legislate for the creation of a National Do-Not-Disturb Registry (NDNDR) along with stringent penal provisions against the organizations which harass the citizens who register their numbers within this Registry. There is also an urgent need to create awareness among the citizens to explain the significance of their personal data and the need to protect the same. A large number of instances have come to light where the *access to personal data of the politicians in the country especially the Parliamentarians at both the central and state level is misused for political vendetta.* Hence, there is a need to

bring the Government officials to be brought under the purview of the Act in order to ensure that such illicit tracking and misuse of access to personal data can be prevented.

Various countries across the globe have recognized the importance of enacted comprehensive legislations giving protection to data of its citizens.

Various provisions in the current legal framework including the information Technology Act deal with the protection of data of the citizens. However, the laws in this country have not been able to keep up with the speed of fast changes occurring in the world of technology. There is a need to make the penal provisions for illegal capturing, storing and performing other such malicious activities with the personal data of the citizens even more stringent. There is also a need to introduce a component of payment of financial compensation to aggrieved user whose data has been misused by the organizations in order to disincentivize perfomance of such unlawful activities.

Hence, in the times when the internet and data generated through the same are becoming ubiquitous, it is pertinent that the rights in relation to the same are imparted to the citizens and such a measure will surely help in proving the age old adage *'A stitch in time, saves nine.'* The AP shah Committee submitted a report on the need to enact a law on privacy in the year 2012. Despite the passage of four years, still the Government has not enacted a comprehensive law on data privacy in the country. *It is high time that a law should be enected to protect the very foundational premise for the success of Digital India which is the protection of data of its citizens without further delay.*

The need of the hour is to develop fool-proof data-protection laws in the country. There is an urgency to create a comprehensive law for imparting holistic privacy to the personal data of the citizens of this country.

Hence, this Bill.

VIVEK GUPTA

FINANCIAL MEMORANDUM

Clause 4 provides for creations of a National Do-Not-Distrub Registry. Clause 6 provides for creation of awareness of protection of personal data. Clause 10 seeks to establish a National Research Center for Excellence in Data Management. Clause 13 provides that the Central Government shall provide requisite funds for carrying out the purposes of the Bill. At this stage, it is not possible to estimate the amount to be incurred. However, the Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure of about rupees one thousand crore would be involved.

A non-recurring expenditure of rupees one thousand and five hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of details only, the delegation of legislative power is of a normal character.

IV

BILL NO. XXVIII OF 2016

A Bill to provide for special financial assistance to the State of West Bengal for providing an impetus to the financial and economic capabilities of the state administration to carry out developmental activities in the State by making effective utilisation of its resources thereby ensuring that the fruits of development reaches each and every citizen of the State and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title, and commencement.

1. (*1*) This Act may be called the Special Financial Assistance to the State of West Bengal Act, 2016.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Special Financial Assistance to State of West Bengal.

2. There shall be paid such sums of money out of the Consolidated Fund of India, every year, as Parliament may by due appropriation by law provide, as special financial assistance to the State of West Bengal to meet the cost of such programmes and schemes of development, as may be undertaken by the State with the approval of Union Government for the purposes of—

(*i*) promoting the welfare of the backward sections of the society;

(*ii*) implementing the welfare measures with a view to improving the quality of life of the citizens living in the State;

(*iii*) allocating adequate funds for special development projects;

(*iv*) developing adequate infrastructure for promotional of equitable development across the State;

(*v*) effective development and utilisaiton of resources in the State; and

(*vi*) such other purposes which the Government of West Bengal may deem necessary for carrying out the purposes of this Act.

Power to Remove Difficulties.

3. If any difficulty arises in giving effect to the provisions of this Act, the President of India may, by order, make such provisions not inconsistent with the provisions of this Act, which appears to him to be necessary or expedient for removing the difficulty.

Act to supplement other Laws.

4. The provisions of this Act shall be in addition and not in derogation of any other Law for the time being in force dealing with the subject matter of this Act.

STATEMENT OF OBJECTS AND REASONS

West Bengal has been at the center-stage in the country's journey to achieve prosperity since time immemorial. The rich cultural legacy of Bengal ensured that it remained the capital of the undivided India for the majority of the period before independence. Since the beginning of this decade, West Bengal has initiated its journey to attain unprecedented progress and development in social as well as economic spheres. However, the lack of financial resources has been one of the major deterrents in attaining the optimal potential by the state. With a large proportion of the population in the state belonging to backward communities, the dearth of financial assistance comes in the way of providing fruitful opportunities to these citizens for their growth. Though ample natural resources are availble with the state, West Bengal has not been able to make optimal allocation of these resources due to lack of financial funds.

Various developmental projects are being implemented in the state. However, adequate financial allocation of resources will provide the much needed impetus to the West Bengal. This Bill is an earnest attempt to ensure that appropriate financial resources are allocated to the state of West Bengal.

Hence, this Bill.

VIVEK GUPTA

FINANCIAL MEMORANDUM

Clause 2 of this Bill will involve expenditure out of the Consolidated Fund of India for providing special financial assistance to West Bengal. As the sum of monies to be provided to the State of West Bengal will be known only after the welfare schemes to be implemented by the State Government with the approval of the Government of India are identified, it is not possible to give an estimate of recurring expenditure at this stage.

No non-recurring expenditure is likely to be incurred from the Consolidated Fund of India.

V

BILL NO. XLI OF 2016

A Bill to provide for payment of remunerative price for raw jute to the jute growers, insurance of jute crop free of cost and for overall welfare of jute growers and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Jute Growers (Remunerative Price and Welfare) Act, 2016.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "fund" means the Jute Growers Welfare Fund constituted under section 5;

(*b*) "jute grower" means any person who cultivate jute and obtains fibre therefrom; and

(*c*) "prescribed" means prescribed by rules made under this Act.

Procurement of raw jute and fixation of its remunerative price.

3. (*1*) The Central Government shall procure the entire jute crop fibre from jute growers through such agency as may be prescribed.

(*2*) The Central Government shall fix remunerative price of raw jute every year after taking into consideration—

(*a*) increase in the price of jute seeds, pesticides, fertilizers and other inputs;

(*b*) total investment made by the jute growers; and

(*c*) such other factors, as may be prescribed.

Insurance of jute crop.

4. The entire Jute produced by the jute growers shall be compulsorily insured free of cost by the Central Government against natural calamities, fall in the yield of jute, fall in the price of jute and such other eventualities as may be prescribed.

Establishment of Jute Growers Welfare Fund.

5. (*1*) The Central Government, shall, by notification in the official Gazette establish the Jute Growers and Workers Welfare Fund for the purposes of this Act with initial corpus of rupee one thousand crore to be provided by the Central Government by due appropriation made by law by Parliament in this behalf and thereafter the Central and concerned State Government shall contribute to the Fund to such extent and in such manner, as may be prescribed.

(*2*) The Fund may also a receive moneys from corporate houses, financial institutions, individuals and bodies in the form of contributions or donations.

Utilisation of Fund.

6. The Fund shall be utilized,—

(*a*) to provide financial assistance to jute growers for purchasing jute seeds, pesticides and fertilizers and in cases of low yields of jute or loss of their crops due to rains, storms, floods, hailstorms or drought;

(*b*) to pay compensation to the next of kin of jute growers in the event of their death;

(*c*) to provide free health facilities of jute growers and their families;

(*e*) to provide assistance to the jute growers in the event of disability; and

(*f*) for such other purposes as may be prescribed by the Central Government.

Central Government to provide funds.

7. The Central Government shall provide, from time to time, after due appropriation made by Parliament by law in this behalf requisite funds for carrying out the promising of this Act.

Power to make rules.

8. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(*2*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Jute fibre, also known as golden fibre, used to hold a glorious position in our country, Jute is one of the main commercial crops of our country. Jute fibre as an industrial product is used to prepare bio-degradable, eco-friendly cheap bags. But of late, jute growers in the country are facing problems as they are not getting remunerative price for their produce. Jute cultivation is turning out to be a non-profitable venture for the farmers due to increase in the prices of jute seeds, fertilizers, pesticides and other inputs. Due to high investment involved in the cultivation of jute, farmers have to go for loans and on account of being unable to repay the loans, they are living under great distress. Being a cash crop, insurance facility is also not available to the jute farmers. Growing use of synthetic fibre is adding to the woes of jute growers.

The condition of jute growers in the leading jute producing State of West Bengal and Bihar is pitiable. Farmers of these States are getting into debt trap and in many cases, their financial condition is compelling them to take the extreme step of committing suicide. Therefore, it is the responsibility of the Central Government to fix the remunerative price of jute; provide for free and compulsory insurance of jute crops; and constitute a Jute Growers Welfare Fund to meet various needs of jute growers.

Hence, this Bill.

VIVEK GUPTA

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for procurement of entire jutre produced in the country and also fixation of remunerative price of jute by the Central Government. Clause 4 provides for compulsory insurance of jute crop free of cost against natural calamities, fall in the yield of jute and such other eventualities. Clause 5 provides for the constitution of a Jute Growers Welfare Fund with initial corpus of one thousand crore rupees. Clause 7 provides for the Central Government to provide requisite funds for carrying out the provisions of the Bill. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupee three thousand crore may be involved per annum from the Consolidated Fund of India.

A non-recurring expenditure of about rupee one thousand crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

VI

BILL NO. XXVII OF 2016

A Bill to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally-ill and for matters connected therewith and incidental thereto

BE it enacted in the Sixty-seventh Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Medical Treatment of Terminally-ill Patients (Protection of Patients and Medical Practitioners) Act, 2016.

(*2*) It extends to the whole of India except the State of Jammu & Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notifications in the official gazette, appoint.

Definitions.

2. Unless, the context otherwise requires,—

(*a*) "advance medical directive" (also called living will) means a directive given by a person that he or she, as the case may be, shall or shall not be given medical treatment in future when he or she becomes terminally ill and becomes an incompetent patient.

(*b*) "appropriate Government" means in the case of a State the Government of that State and in other cases the Central Government.

'best interests' include the best interests of a patient,—

(*i*) who is an incompetent patient, or

(*ii*) who is a competent patient but who has not taken an informed decision, and are not limited to medical interests of the patient but include ethical, social, moral, emotional and other welfare considerations."

(*c*) 'competent patient' means a patient who is not an incompetent patient.

(*d*) 'incompetent patient' means a patient who is a minor below the age of sixteen years or person of unsound mind or a patient who is unable to,—

(*i*) understand the information relevant to an informed decision about the medical treatment;

(*ii*) retain that information;

(*iii*) use or weigh that information as part of the process of making the informed decision;

(*iv*) make an informed decision because of impairment of or a disturbance in the functioning of his mind or brain; or

(*v*) communicate the informed decision, whether by speech, sign, language or any other mode, as to medical treatment."

(*e*) 'informed decision' means the decision as to continuance or withholding or withdrawing medical treatment taken by a patient who is competent and who is or has been informed by the attending medical practitioner about:—

(*i*) the nature of the illness,

(*ii*) any alternative form of treatment that may be available,

(*iii*) the consequences of those forms of treatment, and

(*iv*) the consequences of remaining untreated.

(*f*) 'Medical Council of India' means the Medical Council of India constituted under the Indian Medical Council Act, 1956. 102 of 1956.

(*g*) 'medical practitioner' means a medical practitioner who possesses any recognized medical qualification as defined in clause (*h*) of section 2 of the Indian Medical Council Act, 1956 and who is enrolled on a State Medical Register as defined in clause (*k*) of that section. 102 of 1956.

(*h*) 'medical power-of-attorney' means a document of decisions in future as to medical treatment which has to be given or not to be given to him if he becomes terminally ill and becomes an incompetent patient.

(*i*) 'medical treatment' means treatment intended to sustain, restore or replace vital functions which, when applied to a patient suffering from terminal illness, will serve only to prolong the process of dying and includes,—

(*i*) life-sustaining treatment by way of surgical operation or the administration of medicine or the carrying out of any other medical procedure; and

(*ii*) use of mechanical or artificial means such as ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation; and

(*iii*) but does not include palliative care."

(*j*) 'minor' means a person who, under the provisions of an Indian Majority Act, 1875 is to be deemed not to have attained majority. 4 of 1875.

(*k*) 'palliative care' includes,—

(*i*) the provision of reasonable medical and nursing procedures for the relief of physical pain, suffering, discomfort or emotional and psycho-social suffering; and

(*ii*) the reasonable provision for food and water."

(*l*) 'patient' means a patient who is suffering from terminal illness.

(*m*) 'terminal illenss' means,—

(*i*) such illness, injury or degeneration of physical or mental conditoon which is causing extreme pain and suffering to the patient and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or

(*ii*) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient."

Refusal of medical treatment by a competent patient.

3. (*1*) Every competent patient including minor aged above sixteen years shall have a right to take an informed decision and to express the desire to the medical practitioner attending on her or him:—

(*i*) for withholding or withdrawing of his medical treatment and to allow nature to take its own course, or

(*ii*) for starting or continuing his medical treatment.

(*2*) When a patient referred to in sub-section (*1*) communicates an informed decision to the medical practitioner, such decision shall be binding on the medical practitioner:

Provided that the medical practitioner is satisfied that the patient is a competent patient and that the patient has taken an informed decision based upon a free exercise of his free will and:

Provided further that in the case of minor above sixteen years of age, the consent has also been given by the parents, or legal guardian or any next of friends.

(*3*) Before proceeding further to give effect to the decision of the competent patient, the medical practitioner shall inform the patient, if conscious, or the spouse or parent or major son or daughter of the patient or in their absence any relative or other person regularly visiting the patient at the hospital about the informed decision of the competent patient and his own opinion on that decision including the need or otherwise of withholding or withdrawing treatment fromt he patient and shall desist from giving effect to the decision for a period of three days following the intimation given to the said patient's relations.

Maintenance of record of Terminally-ill patient.

4. (*1*) The medical practitioner attending on the patient shall maintain a record containing personal details of the patient such as age and full address, the nature of illness and the treatment being given and the names of spouse, parent or major son or daughter, the request or decision, if any, communicated by the patient and his opinion whether it would be in the best interest of the patient to withdraw or withhold the treatment.

(*2*) The patient, spouse, parent or major son or daughter of a patient shall be entitled to receive a copy of the records maintained by the medical practitioner under this section and the medical practitioner shall furnish such records upon request without delay.

Palliative care for terminally ill patients.

5. Notwithstanding that medical treatment has been withheld or withdrawn by the medical practitioner in the case of a competent patient or an incompetent patient in accordance with the foregoing provisions, palliative care shall be administered to such patients by the medical practitioner attending on them.

Protection of competent patients.

45 of 1860

6. Where a competent patient refuses medical treatment in circumstances mentioned in section 3, notwithstanding anything contained in the Indian Penal Code 1860, such a patient shall not be deemed guilty of any offence under the Code or under any other law for the time being in force.

Protection of medical practitioners.

7. Where a medical practitioner or any other person acting under the direction of medical practitioner withholds or withdraws medical treatment in respect of a competent patient on the basis of the desire expressed by the patient which on the assessment of a medical practitioner is in his best interest, then, notwithstanding anything contained in any other law for the time being in force, such action of the medical practitioner or those acting under his direction and of the hospital concerned shall deemed to be lawful provided that the medical practitioner has complied with the requirement of sections 3 and 5 and followed the guidelines laid down by the Medical Council of India in this regard under section 12 of this Act.

Panel of medical experts.

8. (*1*) The appropriate Government in consultations with The Director-General of Health Services and the Director of Medical Services (or officer holding equivalent post) in each State, as the case may be, shall prepare a penal of medical experts for every state and union territory for the purposes of this Act and more than one panel may be notified to serve the needs of different areas.

(*2*) The panels referred to in sub-section (*1*) shall include medical experts with an experience of at least fifteen years in various branches such as medicine, surgery critical care medicine or any other specialty as prescribed by Central Government.

(*3*) The panels prepared under sub-section (*1*) shall be published in the respective websites of the said authorities specified in sub-section (*1*) from time to time and such modifications shall also be published in the website, as the case may be.

Permission for with holding/ withdrawing medical treatment from High Court.

9. (*1*) Any parent, spouse, any near relative, next friend, legal guardian of patient, the medical practitioner or para-medical staff generally attending on the patient obtaining the leave of court, may apply to the High Court having territorial jurisdiction for granting permission for withholding or withdrawing medical treatment of an incompetent patient or a competent patient who is incompetent to take informed decision.

Explanation.—'High Court' in this section and section 11 means the High Court within whose territorial jurisdiction the treatment is being given or is proposed or proposed to be withheld or withdrawn.

(*2*) Such application shall be treated as original petition and the Chief Justice of High Court shall assign the same to a Division Bench without any loss of time and the same shall be disposed of by the High Court within thirty days:

Provided that a letter addressed to the Registrar-General or Judicial Registrar of the High Court by any of the above mentioned persons and containing therein all the material particulars seeking the permission under sub-section (*1*) shall be placed before the Chief Justice without delay and the letter shall be treated as original petition.

(*3*) The Division Bench of the High Court may, if deemed necessary, appoint an *amicus curiae* to assist the Court and where a patient it unrepresented, direct legal aid to be provided to such patient.

(*4*) The High Court shall obtain the expert medical opinion of three medical practitioners drawn from the panel prepared under section 8 and any other expert medical practitioner if, considered necessary and issue appropriate directions for the payment to be made towards the remuneration of the experts:

Provided that as far as practicable, one doctor each on the panel shall be a neurosurgeon, a psychologist and a physician.

(*5*) The expert panel shall follow the guidelines laid down by the Medical Council of India with regard to withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness under section 12 of this Act.

(*6*) The High Court shall, having due regard to the report of panel of experts and the wishes of close relations, namely, spouse, parents, major children or in their absence such other persons whom the High Court deems fit to put on notice and on consideration of the best interests of the patient, pass orders granting or refusing permission or granting permission subject to any conditions.

(*7*) The parent, spouse, any near relative, next friend, legal guardian of patient who consents to, and the medical practitioner or the hospital management or staff who in accordance with the order of High Court, witholds or withdraw medical treatment to the patient concerned shall, notwithstanding any other law in force, be absolved of any criminal or civil liability with regard to the action taken in accordance with the order or High Court.

Withdrawing or contesting the application.

10. (*1*) It shall be open to the party applying for the order of High Court as prescribed in section 9 to withdraw the application anytime before the final decision of the High Court is delivered:

Provided that such party shall submit an application to this effect highlighting the reasons and new facts, if any, and the High Court may accept or reject the application of withdrawal.

(*2*) Parent, spouse, any near relative, next friend, legal guardian of patient, the medical practitioner generally attending on the patient obtaining the leave of the court, may contest the application submitted under section 9 and petition the High Court not to entertain the application or reject the application filed under Section 9, anytime before the final order of the High Court is delivered:

Provided that such party shall submit an application to this effect highlighting the reasons and all relevant facts and the High Court may accept or reject the application:

Provided further that where the High Court accepts this application, the party applying for the order of the High Court under section 9 and the party contesting the application shall be permitted to tender all the relevant evidence and the High Court shall finally dispose of the application along with contesting application within thirty days from the date on which contesting application was received.

(*3*) The party applying for order of High Court under section 9 shall submit a compliance report to the High Court within thirty days from the date on which the order of the High Court was delivered:

Provided that if, the party fails to comply with the decision of the High Court or if, new facts emerge, such party may apply to the High Court citing the reasons for such non-compliance and the High Court may pass such orders as deemed appropriate.

Confidentiality.

11. The Division Bench of the High Court may, whenever a petition under section 9 is filed, direct that the identity of the patient and of his or her parents or spouse, the identity of the medical practitioner and hospitals, the identity of the medical experts referred to in section 4, or of other experts or witnesses consulted by the Court or who have given evidence in the Court, shall, during the pendency of the petition, and after its disposal, be kept confidential and shall be referred only by the English alphabets.

Medical Council of India to frame guidelines.

12. (*1*) Consistent with the provisions of this Act, the Medical Council of India may prepare and issue guidelines, from time to time, for the guidance of medical practitioners in the matter of withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness.

(*2*) The Medical Council of India may review and modify the guidelines from time to time.

(*3*) The guidelines and modifications thereto, if any, shall be published on the website and a press release may be issued to that effect.

Advance medical directives and medical power of attorney.

13. Every advance medical directive (also called living will) or medical Power-of-Attorney executed by a person shall be taken into consideration in matter of withholding or withdrawing of medical treatment but it shall not be binding on any medical practitioner.

Power to make rules.

14. The Central Government may, by notification in the official gazette, make rules for carrying out at the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Following the landmark judgment of the Hon'ble Supreme Court in Aruna Ramchandra Shaunbag *Vs*. Union of India, Law Commission of India in its 241st Report in August, 2012 advocated for legalising passive euthanasia. Passive Euthanasia, also called as negative euthanasia involves withholding of medical treatment or life support system for continuance of life. As opposed to active euthanasia which requires doing something to end a life and which is a crime in India, passive euthanasia involves not doing something which would have preserved a patient's life. These decisions are taken on humanitarian grounds in the best interest of the patient allowing a patient to die a natural death thereby upholding their dignity in death.

The Hon'ble Supreme Court legalised passive euthanasia in the above mentioned judgment and in its wisdom appointed the High Court as *parens patriae* in such cases where a terminally ill patient is unable to give his/her consent and the parents, spouse, relative, friend or medical practitioner attending on him/her applies to the court for withdrawing the treatment. The Bill provides for detailed procedures which can be followed in this regard providing adequate safeguards for the patient and excludes criminal liability of their relatives and medical practitioners who withhold the treatment following the order of the court.

Passive euthanasia today is legalised in many countries and India is no exception. Our Constitution acknowledges the right to life of every person which includes in it the right to live this life with dignity. Legalising passive euthanasia will permit terminally ill patients to live their final days in dignity where any kind of intrusive medical treatment with its attendant side effects is only likely to prolong death and not avert it altogether.

Hence this Bill.

HUSAIN DALWAI

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

VII

BILL NO. XXXIV OF 2016

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-Seventh Year of the Republic of India as follows:—

Short title.

1. (*1*) This Act may be called the Constitution (Amendment) Act, 2016.

Insertion of new article 25A.

2. After article 25 of the Constitution, the following article shall be inserted, namely:—

Right to Communal Harmony.

"25A. Subject to other provisions of this Part, the state shall ensure that every person enjoys communal harmony.

Explanation.— For the purposes of this article, 'right to communal harmony' includes—

(*a*) peaceful co-existence of different groups or communities, whether based on religion, caste, place of birth, race or language;

(*b*) protection against any act or omission which is intended to cause violence or destruction of property by creating disharmony or arousing feelings of enmity, hatred or ill— will among different groups or communities;

(*c*) prompt legal and judicial remedy in case of violation of this right."

STATEMENT OF OBJECTS AND REASONS

Communal disturbances whether the social fabric of the country and waver the focus of the Government and the people from developmental agenda. Incidents of communal clashes are detrimental to the democratic principles on which our nation was founded and bring into question the commitment of the Government to observe secular principles of the Constitution. Communal polarization which often follows any incident of communal tension especially affects and alienates minority communities. Communal violence hampers the feeling of brotherhood and enables terrorist elements to sway young impressionable minds towards extremism. Therefore, it is incumbent upon any Government of the day to state, in very clear and unequivocal terms, its commitment towards maintaining communal peace in the country under all circumstances and to acknowledge and respect that every citizen in this country enjoys a right to communal harmony which derives its essence from the right to life, personal liberty, freedom of speech and expression and freedom of religion. Further, every State needs to agree that evey incident of communal violence must be investigated in a just and unbiased manner irrespective of the caste, religion, class, occupation, office and political affiliation of the accused.

It is expected that every Government would find itself beholden to the Constitutional ideals and will take positive steps to strengthen communal ties by promoting cultural exchanges, dialogues and early detection and prevention of communal flare ups and to use all available means to guarantee the right to communal harmony through Constitutional, legislative and administrative safeguards.

Hence, this Bill.

HUSAIN DALWAI

VIII

BILL NO. XL OF 2016

A Bill to consolidate and clarify the law relating to dissolution of marriage by men and women married according to Muslim law.

WHEREAS the Convention on Elimination of All Forms of Discrimination Against Women, adopted by United Nations in 1979 and ratified by India on 9th July, 1993 requires that all forms of discrimination against women be condemned and States must take appropriate legislative measures to prohibit all forms of discrimination against women and establish legal protection of their rights on an equal basis with men;

AND WHEREAS it is imminent that India joins the league of other nations which have codified the law related to dissolution of marriage in order to bring uniformity and certainty in the application of personal laws without infringing on the right of communities to be governed by their own personal laws;

NOW, THEREFORE, it is expedient to re-enact the Dissolution of Muslim Marriage Act, 1939 in order to ensure that Muslim women have equal opportunities to dissolve a marriage and that they are not discriminated against or made to suffer because of

unilateral pronouncement of divorce by their husbands and to provide for timely settlement of their rights and dues before dissolution of marriage.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and extent.

1. (*1*) This Act may be called the Dissolution of Muslim Marriage Act, 2016

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

Definitions.

2. In this Act unless the context otherwise requires,—

(*a*) "arbiter" means an adult of either gender who has either been requested by the parties or directed by the court in a dissolution of marriage proceeding initiated under this Act to attempt reconciliation between the parties;

(*b*) "court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(*c*) "dower" means the consideration for marriage as agreed upon at the time of soleminization of marriage between the parties which is meant for the financial security of the bride and can be in terms of money or property or both and becomes payable to wife at the time of solemnization of marriage;

(*d*) "maintenance" includes any gross sum of money or such monthly or periodical sum for a term, not exceeding the life of the wife, in accordance with the lifestyle the parties have enjoyed during the marriage and the economic status of the husband;

(*e*) "witness" means an adult of either gender with a address and identity proof.

CHAPTER II

DISSOLUTION OF MARRIAGE THROUGH COURT

Ground for decree of dissolution marriage by wife.

3. (*1*) A woman marriede under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely,—

(*i*) the whereabouts of the husband have not been known for a priod of two years;

(*ii*) the husband has neglected or has failed to provide for her maintenance for a period of two years;

(*iii*) the husband has been sentenced to imprisonment for a period of two years or more;

(*iv*) the husband was impotent at the time of the marriage and continues to be so;

(*v*) the husband has been incurably of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;

(*vi*) the husband has, after the somennization of marriage, treated her with cruelty;

(*vii*) the husband has maintained, after solemnization of marriage, voluntary sexual relations with persons other than his own wife;

(*viii*) due to irretrievable breakdown of marriage, life together has become impossible or intolerable;

(*ix*) she, having been given in marriage by her father or other guardian before she attained the age of eighteen years, repudiated the marriage before attaining the age of twenty one years;

(*x*) the husband has more wives than one:

Provided that a woman may file a petition on this ground, notwithstanding that she had knowledge of or had consented to the subsequent marriage:

Provided further that a woman who marries a man already married may file a petition on this ground only if, she did not have knowledge of a previously subsisting marriage:

Provided also that—

(*a*) a woman may be permitted to file petition for divorce, within such reasonable time period which is shorter than the time periods provided in clauses (*i*), (*ii*), (*iii*), and (*v*) of sub-section (*1*) if, the court is satisfied that the same is expedient in the interest of justice and equity;

(*b*) no decree shall be passed on ground specified in clause (*iii*) of sub-section (*1*) until the sentence has become final;

(*c*) a decree passed on ground specified in clause (*i*) of sub-section (*1*) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the court that he is prepared to resume conjugal relations, the court shall set aside the said decree; and

(*d*) before passing a decree on ground specified in clause (*iv*) of sub-section (*1*) the court shall, on application by the husband, make an order requiring the husband to satisfy the court within a period of one year from the date of such order that he has ceased to be impotent, and if, the husband so satisfies the court within such period, no decree shall be passed on the said ground.

Grounds for decree of dissolution of marriage by husband.

4. A man married under Muslim law shall be entitled to obtain a decree for the dissolution of his marriage on any one or more of the followings grounds, namely:—

(*i*) the whereabout of the wife have not been known for a period of two years;

(*ii*) the wife has been sentenced to imprisonment for a period of two years or more;

(*iii*) the wife has been incurably of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;

(*iv*) the wife has, after the solemnization of marriage, treated him with cruelty;

(*v*) the wife has maintained, after solemnization of marriage, voluntary sexual relations with persons other than her own husband;

(*vi*) due to irretievable breakdown of marriage, life together has become impossible or intolerable;

(*vii*) he, having been given in marriage by his father or other guardian before he attained the age of eighteen years, repudiated the marriage before attaining the age of twenty one years:

Provided that—

(*a*) a man may be permitted to file a petition for divorce, within such reasonable time period which is shorter than the time periods provided in the

clauses (*i*), (*ii*), and (*iii*) of this clause 4, if the court is satisfied that the same is expedient in the interest of justice and equity;

(*b*) no decree shall be passed on ground provided in clause (*ii*) until the sentence has become final;

(*c*) a decree passed on ground provided in clause (*i*) shall not take effect for a period of six months from the date of such decree, and if the wife appears either in person or through an authorised agent within that period and satisfied the Court that she is prepared to resume her conjugal relations, the Court may set aside the said decree.

Notice to be served on heirs of the spouse, when the spouse's whereabouts are not known.

5. In a suit to which clause (*i*) of sub-section (1) of section 3 clause (*i*) of section 4 applies:—

(*1*) the names and addresses of the persons who would have been the heirs of the spouse under Muslim law if, they had died on the date of the filing of the plaint shall be stated in the plaint,

(*2*) notice of the suit shall be served on such persons, and

(*3*) such persons shall have the right to be heard in the suit.

Procedure to be followed before granting decree of divorce.

6. Upon receiving the application for decree of dissolution of marriage from either of the parties to marriage on any of the grounds mentioned above, the Court shall:

(*i*) appoint three arbiters—one arbiter each from the family of both parties as nominated by the parties themsevles and one member from a welfare organisation registered as per the provisions of this Act for the purpose of attempting reconciliation between the parties within thirty days of the date of application:

Provided that at least one arbiter should be a woman.

(*ii*) direct the parties to attend and fully participate in the reconciliation proceedings to be commenced by arbiters within two weeks of their appointment.

(*iii*) direct the arbiters to conduct their duties in a fair, just and impartial manner;

(*iv*) direct the arbiters to submit their report to the court within a period of three months from the commencement of reconciliation proceedings indicating the conclusion of the reconciliation process and the reasons for reaching that conclusion;

(*v*) after receiving the report of the arbiters, send a copy each to both the parties;

(*vi*) direct both the parties to submit objections, if any, to the report within a period of thirty days from the date of receiving the report;

(*vii*) if, the parties have reached an agreement and differences are resolved, dismiss the suit or if, the parties fail to reach an agreement, continue the procedure for the suit for decree of dissolution of marriage:

Provided that the Court may make such interim orders, notwithstanding anything contained in any other law for the time being in force, for maintenance of the wife and children, if any, as appropriate for the whole or part of the duration of the procedure laid down in this section.

Registered Welfare Organisations.

7. After coming into force of this Act:—

(*i*) any organization, registered under any law for the time being in force in India, and working for the welfare of men, women, children, youth, aged, disabled and the likes, and providing counseling services and other psycho-social support in their day to day activities, may register themselves with the District Legal Services Authority of the district in which they have a functional office;

(ii) the District Legal Services Authority shall verify the credentials of these organisations and require these organisations to send forth names of members

associated with their organization who are counsellors or psycho-social workers in the filed of gender or human rights, are well versed with Muslim personal laws and can offer their services as arbiters for the purpose of this Act;

(*iii*) after receiving such names, the District Legal Services Authority shall make available in its office and on its website an updated list of such organisations along with their members registered as arbiters.

Settlement of rights of the parties before final decree.

8. (*1*) Notwithstanding any proceeding initiated under this Act, every woman shall have the right to institute any proceedings, simultaneous or on conclusion of proceedings under this Act, under any or all of the following legislations—

(*i*) the Muslim Women (Proteciton of Rights on Divorce) Act, 1986. 25 of 1986

(*ii*) the Protection of Women from Domestic Violence Act, 2005. 43 of 2005.

(*iii*) the Code of Criminal Procedure, 1973. 2 of 1974.

(*iv*) Any other law for the time being in force, applicable to her:

Provided that it shall be the duty of the Court to ensure that the woman is aware of this right.

(*2*) The court may pass such interim orders or make such provisions in the decree as may deem just and proper, when so petitioned, related to maintenance, inheritance, custody and education of children, consistent with their wishes wherever possible and in accordance with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937 and any other applicable law for the time being in force. The Court may, even after the decree, upon application by petition for this purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as may deem just and proper to the court. The court may also from time to time vary any such orders and provisions previously made: 26 of 1937.

Provided that the application with respect to the interim maintenance and education of the children, pending the proceeding for obtaining such decree, shall as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

CHAPTER III

DISSOLUTION OF MARRIAGE OUTSIDE COURT

Procedure for dissolution of marriage.

9. Dissolution of marriage proceedings, by whatever name called, initated by either or both the parties to a marriage without the intervention of a court shall be concluded through the following procedure if;

(*1*) if there are signs of marital discord, both the husband and wife shall reason with each other through discussion;

(*2*) if differences persist, both husband and wife shall obstain from Sexual Intercourse with each other temporarily;

(*3*) if the parties still do not resolve the discord, then both husband and wife shall make another attempt at reconciliation;

(*4*) if there is still no resolution, the parties shall place the matter before two arbters, one each from family of each spouse for their assistance in achieving reconciliation:

Provided that, either or both parties, individually or through mutual agreement may also engage a third arbiter from a registered welfare organization as provided under section 7:

Provided further, that at this stage, it shall be the duty of the arbiters to ensure that, if needed, there is adequate provision made for maintenance of wife and children, if any, while reconciliation proceedings are going on.

(*5*) if reconciliation by arbiters also fails, then the arbiters may make the first pronouncement of dissolution of marriage in clear terms in the presence of each other and before and two witnesses;

(*6*) the first prononcement of dissolution of marriage shall follow a waiting period of three menstrual cycles (three months for menopausal women) which is to be calculated from the day of first pronouncement of dissolution of marriage;

(*7*) the wife is pregnant at the time of first pronouncement of dissolution of marriage, then the waiting period shall be termination of pregnancy or three months whichever is leter;

(*8*) during the waiting period, the parties are at liberty to revoke the pronouncement and resume conjugal relations without contracting fresh marriage;

(*9*) after the waiting period is over, the parties may request the arbiters to make a second pronouncement of dissolution of marriage which shall again be followed by a period of waiting as enumerated above;

(*10*) the waiting period after the second pronouncement of divorce has ended, the parties may contract fresh marriage or request the arbiters to make a final and third pronouncement of dissolution of marriage;

(*11*) before making the third and final pronouncement of marriage, the arbiters shall ensure that all matters related to dower and maintenance of the woman as well as inheritance, custody, education of children, have been amicably and fairly settled, consistent with their wishes wherever possible and in accordance with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937.

26 of 1937

(*12*) once the third and final pronouncement of dissolution of marriage has been made, the parties are not longer married to each other.

Rights of women not to be affected.

10. (*1*) Notwithstanding that the dissolution of marriage proceedings have been initiated at the behest of the wife, it shall not affect any of the rights to dower and maintenance that the wife is otherwise entitled to.

(*2*) Notwithstanding the dissolution procedure as prescribed in section in section 9 the wife shall be entitled to institute any proceeding in the appropriate Court under any or all of the following legislations—

25 of 1986

(*i*) The Muslim Women (Protection of Rights on Divorce) Act, 1986.

43 of 2005

(*ii*) The Protecton of Women from Domestic Violence Act, 2005.

2 of 1974

(*iii*) the Code of Criminal Procedure, 1973.

(*iv*) Any other law for the time being in force, applicable to her.

Dissolution of marriage outside court through any other procedure to be invalid.

11. After coming into force of this Act, dissolution of marriage, by whatever name called, initiated outside court shall be concluded only through the procedure mentioned under section 9. and the dissolution of marriage concluded through any other procedure, in contravention of the procedure mentioned under section 9 shall be invalid and without any legal effect.

Refusal of spouse to cooperate.

12. If in a proceeding initiated under section 9 by one spouse, the other spouse refuses to cooperate or refuses to participate in the reconciliation or dissolution of marriage proceedings initiated at the behest of one spouse, it shall amount to cruelty of conduct and may be a ground for approaching the Court for dissolution of marriage under section 3 or section 4 respectively.

Decree of dissolution of marriage concluded outside court.

13. (*1*) If the parties married under Muslim Law have concluded a disollution of marriage by following the procedure provided under clause 9, then they shall approach the court for a decree of dissolution of marriage.

(*2*) Each of the party shall submit an application along with affidavits to be submitted by each of the parties and the arbiters stating that the procedure mentioned under clause 9 has been followed and the right of the parties have been amicably and fairly settled:

Provided that it shall be the duty of the Court to ensure that the woman is aware of her right as prescribed under sub-section (*2*) of clause 10 before passing the final decree of dissolution of marriage under this Act.

(*3*) After satisfying itself of the veracity of the affidavits and that the procedure outlined in section 9 has been followed, the Court shall either pass a decree of dissolution of marriage, in accordance with the other provisions of this Act, or dismiss the petition directing the parties to first comply with the requirements of this Act:

Provided that if any party objects to any settlement related to dower and maintenance of wife or maintenance, custody, inheritance, education of children as reached under section 9 of this Act, the Court may deem such an objection as non-fulfilment of procedure outlined under section 9 and may dismiss the petition, requiring the parties to reach a settlement first and then file a fresh application for decree of divorce.

CHAPTER IV

JURISDICTION AND PROCEDURE

Court to which petition should be made.

14. Every petition under Chapter II or Chapter III shall be presented to the Court within the local limits of whose original civil jurisdiction.—

(*i*) the marriage was solemnized; or

(*ii*) the respondent, at the time of the presentation of the petititon resides; or

(*iii*) the parties to the marriage last resided together; or

(*iv*) in case the wife is the petitioner, where she is residing on the date of the presentation of petition, or;

(*v*) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends or has not been heard of as being alive for a period of two years by those who would naturally have heard of him if he was alive.

Application of Act 5 of 1908.

15. Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908. 5 of 1908.

CHAPTER V

MISCELLANEOUS

Effect of conversion to another faith.

16. The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 3:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

Remarriage between parties who have concluded dissolution of marriage.

17. (*1*) Parties who have concluded dissolution of marriage either before or after the coming into force of this Act and who intend to remarry each other without any compulsion, force or threat may do so by contracting a fresh marriage after the waiting period as prescribed under this Act is over.

(*2*) No woman shall be compelled through coercion, force, threat or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage before she can remarry a man with whom she was married earlier but that marriage was dissolved.

(*3*) Any person who compels a woman through coercion, threat, fraud or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage in order to remarry a man with whom she was married earlier but that marriage was dissolved shall be punishable with an imprisonment of six months or fine or both.

(*4*) Any person who solemnizes or acts as a witness to a marriage knowing that the marriage is being contracted for the sole purpose of consummation and subsequent dissolution in order to compel a woman to remarry a man she was earlier married to shall be punishable with an imprisonment of three months or fine or both.

(*5*) Any offence punishable under this Act shall be deemed to be bailable and non-cognizable, within the meaning of the Code of Criminal Procedure, 1973 and will be triable by a Magistrate, as provided in the Code.

2 of 1974

Automatic dissolution of marriage after lapse of a certain period of time.

18. Notwithstanding anything contained in any contract to this effect, any dissolution of marriage which takes place automatically after lapse of a certain period of time prescribed in the nikahnama or othwerwise will be invalid and without any legal effect unless such dissolution follows the procedure laid down in this Act.

Application of the Act.

19. (*1*) Except where otherwise provided, for matters concerning dissolution of marriage between parties married according to Muslim Law, the provisions of this Act shall apply notwithstanding anything contained in any other law for the time being in force.

(*2*) Nothing contained in this Act shall be deemed to affect the provisions contained in Special Marriage Act, 1954 with respect to marriages solemnized under the Act, in which either or both parties are Muslims, whether before or after the commencement of this Act.

43 of 1954

Overriding effect of the Act.

20. (*1*) All the proceedings for dissolution of marriage, in whatever form, initiated after the coming into force of this Act, shall be governed by the provisions of this Act irrespective of the date on which the marriage was contracted.

(*2*) Any other law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect in so far as it is inconsistent with any provision contained in this Act.

Power to make rules.

21. The Central Government may be notification in Official Gazette make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

There is a call, especially from Mulsim women, to bring reforms within the space of Muslim personal laws as certain laws, like the law related to divorce or talaq, are heavily prejudiced against women. With the Supreme Court, taking up the cudgels to look into whether the practice of triple talaq is a violation of fundamental rights of Muslim women, this Bill strives to draw heavily from settled legal jurisprudence in this regard and relies on credible interpretations of the Holy Quaran to codify the Quranic injunctions with regard to talaq, in full letter and sprit. This will not only ensure that there is no discrimination between men and women in circumstances of dissolution of marriage, but also ensure that there is no infringement of the rights of the Muslim community to practice their religion and conduct their lives as per their faith.

India must join the league of many other Muslim countries like Iraq, Turkey and our neigbours Bangladesh and Pakistan which have codified the law related to divorce thereby bringing certainty and remvoing discrimination in the application of personal laws.

Hence, this Bill.

HUSAIN DALWAI

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only. The delegation of legislative power is of normal character.

IX

BILL NO. XXXVIII OF 2016

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Constitution (Amendment) Act, 2016.

(*2*) It shall come into force at once.

Amendment of article 324.

2. In article 324 of the Constitution, after clause (*1*), the following provisos shall be inserted, namely:

"Provided that notwithstanding any judgement or order of any court, nothing in clause (*1*) of article 324 shall authorise the Election Commission to pass any order or issue any instruction covering a substantive law with respect to which Parliament has the legislative competence:

Provided further that the Election Commission shall be authorised to deliberate on matters which do not fall within its jurisdiction for the purpose of recommending to the Union for intimating legislation on the subject".

STATEMENT OF OBJECTS AND REASONS

Under article 324(1) of the Constitution of India, Election Commission of India has power of "superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State."

However, at times the Election Commission issues instructions and orders purportedly under the above clause, which cover substantive law.

India has two substantive laws, namely the Representation of the People Act, 1950 and the Representation of the People Act, 1951. These legislations are exhaustive in nature and no other legislations are needed to conduct elections in free and fair manner.

Article 324 does not authorise the Election Commission to play the role of law maker which has been assigned to Parliament. It is, therefore, necessary to amend the Constitution.

Hence, this Bill.

SHANTARAM NAIK

X

BILL NO. XXXIV OF 2016

A Bill further to amend the Indian Forest Act, 1927.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title, and commencement.

1. (*1*) This Act may be called the Indian Forest (Amendment) Act, 2016.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Substitution of new section for section 35.

2. In the Indian Forest Act, 1927 (hereinafter referred to as the principal Act), in chapter V, for section 35 the following section shall be substituted, namely:—

"35. The State Government shall not exercise any control over any forest or land not being the property of State Government except in accordance with law passed by Parliament for the purpose."

Substitution of new section for section 36.

3. For section 36 of the principal Act, the following section shall be substituted, namely:—

"36. The State Government shall frame rules for the purpose of carrying out the objects of this chapter."

Omission of section 37.

4. Section 37 of the principal Act shall be omitted.

Omission of section 38.

5. Section 38 of the principal Act shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Indian Forest Act, 1927 provides for Reserved Forests, Village Forests and Protected Forests. However, Chapter V of the Act contain section 35 to 38 to regulate forest and lands which are not the property of the State Government, popularly called as 'Private Forests'.

Some States Governments have started doing surveys to identify Private Forests. However, during the surveys carried, vast areas of plantations, agriculture, horticulture, garden lands have been included and identified as 'Private Forest'. In most of the cases, owners of land, which have been declared as Private Forests, are not aware that their lands, have been so declared. Before the start of these surveys no policy guidelines were announced by the State Governments, who were entrusted with the duty of doing survey.

In a number of cases, the land which is covered by 'Private Forests' is a mixed land where agriculture, horticulture, plantations, garden lands exists side by side. Hence, there is an urgent need to enact an exhaustive legislation on forests combining the Indian Forest Act, 1927 and the Forests (conservation) Act, 1980 and all other related Acts.

However, in any case, no land should be declared as 'Private Forests', without enacting any legislation on the subject as, the present practice of notifying Private Forests, amounts to criminal trespass, which should be halted.

Hence, this Bill,

SHANTARAM NAIK

XI

BILL NO. XXXXIII OF 2016

A Bill further to amend the Representation of the People Act, 1950.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Representation of the People (Amendment) Act, 2016.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 16 of Act 43 of 1950.

2. In section 16 of the Representation of the People Act, 1950 in sub-section (*2*) after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that in the matter of electoral rolls maintained in the State of Goa, no name shall be struck off by the Election Commission or any authority under the Election Commission on reasons of an elector losing his Indian citizenship merely on ground that his birth stands registered in Portugual on account of any decree or order passed by the appropriate authority in Portugal, permitting people of Goa born before the liberation of the territory, to register their births in that country, unless by a specific judgement or order, the Election Commission is directed to do so."

STATEMENT OF OBJECTS AND REASONS

Thousands of Goans born in "Estado da India", *i.e.* Goa, Daman & Diu, prior to 19.12.1961, and in Dadra & Nagar Haveli, prior to 21.08.1954 and their births registered in the Civil Registration Offices of these territories before the above mentioned dates have been given a facility by the Portuguese Government by issuing an order in 2006, to register their birth in Portugal.

There is an urgent need to protect thousands of other Indian citizens who were residing in the erstwhile Union Territory of Goa, Daman and Diu and Dadra and Nagar Haveli who got their births registered in Portugal, in the last seven to eight years in the bonafide belief that such a registration will help them to go to Europe freely, without any hassles. Some others, believed that the facility may help them easy access to the foreign universities. There was, apparently, no intention, of the most of the applicants that, in the process, they would lose the Indian citizenship.

The issue has taken a complicated turn as these thousands of Indian citizens are likely to be considered as non-citizens and/or there is a danger of their losing Indian citizenship if, the provisions of the Citizenship Act, 1955 are not interpreted by taking into this background.

The Government gave an assurance in the Rajya Sabha that a solution would be found out for the vexed problem, and that the Government is keen to solve the problem. However, the Government has now announced the creation of an authority to examine each of the affected person's cases, to decide on the citizenship issue. This is going to consume a considerable time. As elections are fast apporaching, there is a need to protect the names of these citizens from delection by the Election Commission. Therefore, it is prosposed to amend the Representation of people Act, 1950 so that no name shall be deleted by the Commission from the electoral rolls mentioned in the State of Goa.

All these aspects are going to badly affect fundamental rights of a vast number of Goans, more particularly voters belonging to minority community, as they will be sent back from the polling booths.

Hence, this Bill.

SHANTARAM NAIK

XII

BILL NO. XXXI OF 2016

A Bill to provide for the segregation and re-cycling of municipal solid waste, use of re-cyclable waste in waste-energy plants for generation of energy and transportation of non-recyclable waste into landfills and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title, extent and Commencement.

1. (*1*) This Act may be called the Solid Waste Management Act, 2016.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means in the case of a State, the Government of that State and in all other cases, the Central Government;

(*b*) "large manufacturing facility" means any manufacturing facility with an investment of more than rupees twenty crore;

(*c*) "municipal authority" means Municipal corporation, Municipal committee, Municipality, Nagar Palika, Nagar Nigam, Nagar Panchayat, Municipal Council including Notified Area Committee or any other local body constituted under the relevent statutes and entrusted with the responsibility of management and handling of municipal solid wastes;

(*d*) "segregation" means separation of municipal solid wastes into organic, inorganic, bio-degradable, non-biodegradable, recyclable and non-recyclable waste and hazardous wastes;

(*e*) "waste-energy plants" means plants where solid waste is treated using different techniques to produce any form of energy; and

(*f*) "waste generating unit" means any entity, household or large manufacturing facility where waste is generated and which require waste disposal.

Duty of waste generating unit and large manufacturing facility.

3. (*1*) The appropriate Govt. shall ensure that every waste generating unit within its jurisdiction segregates waste before its disposal.

(*2*) In case of large manufacturing facility, the owner or the in-charge of the facility shall, as the case may be—

(*a*) ensure that the waste is segregated, re-used and re-cycled at source; and

(*b*) undertake transportation of re-cyclable waste to waste-energy plants and the non-recyclable and non-biodegradable waste to the notified landfills, as the case may be.

(*3*) The appropriate govt. shall ensure that the waste generating units are liable to pay for the waste generated by them that is sent to the landfills on the basis of the weight of the waste in such manner as may be prescribed.

Duty of the municipal authority.

4. Every appropriate Govt. shall ensure that it is the duty of the Municipal authority to —

(*a*) collect the segregated waste from the waste generating units;

(*b*) ensure that the segregated waste collected and transported is not mixed with any other waste or any material, to the extent that mixing would hamper its re-use, re-cycle, further treatment or its use in waste-energy plants;

(*c*) undertake treatment of organic waste through bio-degradation such as vermin composting, mechanical composting, by window method or any other suitable method as approved by the Central Pollution Control Board or the State Pollution Control Board, as the case may be; and

(*d*) transport the non-recyclable waste, non-biodegradable waste to the notified landfills.

Penalty.

5. Whoever violates the provisions of this Act shall be punished with imprisonment for a term which may extend up to three months and fine which may extend up to rupees twenty thousand.

Central Government to provide requisite funds.

6. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide requisite funds to the State Governments for carrying out the purposes of this Act.

Act not in derogation of any other law.

7. The provisions of this Act shall be in addition to and not in derogation of any other law, for the time being in force.

Power to make rules.

8. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

It is estimated that more than ten lakh tonnes of waste is generated in our country. The waste is largely composed of metals, plastics, paper, food, glass and presently majority of the waste is sent to the landfills with only a portion being used in waste-energy plants or recycled or reused. Waste can instead be used as an alternative to the depleting petroleum products and it would also keep the environment safe and clean.

The Bill seeks to ensure that waste from landfills is segregated and recycled, reused as input to waste-energy projects. Non-recyclable wastes and hazardous wastes can be dumped in the notified landfills. Proper handling and disposal of municipal waste could result in generating employment and serve as an opportunity for entrepreneurs in the waste-energy sector. In various countries there are laws for proper disposal of wastes.

Hence, this Bill.

DR. T. SUBBARAMI REDDY

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for certain steps to be taken by the municipal authorities for collection of segregated municipal solid waste, transportation of recyclable waste to waste-energy plants and non-recyclable wastes to the notified landfills. Clause 6 provides that the Central Government shall provide adequate funds for carrying out the purposes of this Act. This Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees four hundred crore per annum would be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees two hundred crore is also likely to be involved.

———

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of details only, the delegation of legislation power is of a normal character.

XIII

BILL NO. XXXII OF 2016

A Bill to provide for education loan to students and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Education Loan Act, 2016.

(*2*) It extends to the whole of India, except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requres,—

(*a*) "Bank" means any nationalized or commercial Bank and includes a private, co-operative or foreign Bank;

(*b*) "prescribed" means prescribed by rules made under the Act; and

(*c*) "student" means a person who is pursuing any recognised course of study, including any professional or vocational course in any college or institution or university.

Scheme for education loan to students.

3. (*1*) The Central Government shall, within six months of the commencement of this Act, formulate a scheme for providing education loan at such rate of interest, as may be prescribed, to students for following purposes, namely:—

(*a*) pursuing professional courses such as medical, engineering or vocational course or education in any discipline in any recognised college or institution or university; and

(*b*) pursuing research in any recognized research institute or university.

Application for loan.

4. (*1*) An application for education loan shall be made by a student to any branch of a Bank in such manner as may be prescribed.

(*2*) An application made under sub-section (*1*) shall be disposed of within a period of one month from the date of its receipt.

Bank to pay directly to the institution.

5. The Bank shall make payment directly to the head of the college or institution or university where the student is studying or seeking admission.

Bank not to deny educational loan.

6. No bank shall,—

(*i*) refuse ordinarily an education loan to a student on any ground;

(*ii*) insist on any sort of guarantee, mortgage or surety for the purpose of disbursement of loan;

(*iii*) charge interest more than the rate prescribed;

(*iv*) keep or withhold degree, diploma certificates, mark sheets in original; and

(*v*) initiate recovery process of the loan before the completion of one year of securing a job by a student who has taken an education loan.

Punishment.

7. If any Bank violates the provisions of section 6, the chairman and managing director or other officer of the bank responsible for the violation, unless he proves that such violation took place without his knowledge or that he exercised all due diligence to prevent, shall be deemed to be guilty of such violation and shall be punished with imprisonment for a term which may extend upto six months or a fine up to rupees two lakh, or both.

Waiving off loan.

8. (*1*) The Central Government shall formulate a scheme for waiving off such loan, if a student, even after five years of completing his course, fails to secure any employment.

(*2*) Subject to such rules as may be made, the waiving off of loans shall be applicable only to such bona fide students who do not get employment after completing their education.

Power to make rules.

9. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

It is indeed a welcome step that educational loans are being given to students for pursuing higher education. Economically poor students, who could not earlier afford the cost of professional and higher education are also now in a position to pursue higher education because of education loan. However, the policy of giving education loan is deficient on many counts. It has no statutory backing or proper guidelines. Each bank has its own guidelines and fixes its own criteria for disbursing loan. Many banks often refuse the same on some frivolous and technical grounds. Guarantee and surety are always insisted upon before granting the loan. The rate of interest on such loan also varies from bank to bank. Students are harassed and have to run from pillar to post to get the loan disbursed. Students pursuing studies in private institutions and seeking admission in management quota are not given loan. Therefore, it is sought to ensure through the Bill that education loan should not be denied to any student. Any person who violates the guidelines framed for education loan shall be punished so that no bank dares to refuse loan to students.

Further, many students after completion of their course do not get jobs. Thus, they are not in a position to repay the loan taken. In such cases, a policy or scheme for waiving of loans has been envisaged in the proposed Bill.

Hence, this Bill.

DR. T. SUBBARAMI REDDY

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the framing of a scheme for providing educational loans to students. Clause 8 provides for framing of a scheme for waiving off educational loan if, a student fails to secure any employment, five years after completion of his course. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees two hundred crore will be involved as a recurring expenditure per annum from the Consolidated Fund of India.

A non-recurring expenditure to the tune of rupees one hundred crore is also likely to be involved.

———

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

XIV

BILL NO. XLII OF 2016

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-Seventh Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Constitution (Amendment) Act, 2016. Short title and commencement.

(*2*) It shall come into force at once.

2. In the Constitution of India for article 361B, the following article shall be substituted namely:— Substitution of new article for article 361B.

"361B. A Member of a House belonging to any political party against whom a petition for disqualification has been presented under the Tenth Schedule for the decision of the Chairman or the Speaker, as the case may be, shall not hold any remunerative political post including that of a Minister in Government or any office of profit during the pendency of such petition or till the final decision of the Chairman or the Speaker of the House: Disqualification for holding a remunerative political post a member against whom a petition for disqualification has been presented.

Provided that in the event of a Member of a House being disqualified under the Tenth Schedule, his disqualification shall continue till the date on which the term of his office as such Member would have expired.

Explanation.—For the purposes of this article,—

(*a*) the expression "House" has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(*b*) the expression "remunerative political post" means any office—

(*i*) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(*ii*) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of State, and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.

Amendment of Tenth Schedule.

3. In the Tenth Schedule to the Constitution, (i) in paragraph 6 after sub-paragraph (2), the following sub-paragraphs shall be inserted, namely:—

"(*3*) Subject to the provisions of paragraph 8, all petitions for disqualification of a Member of a House, shall be decided by the Chairman or the Speaker of a House within a period of six months after the petition is presented to him.

(*4*) Nothing contained in the Tenth Schedule shall affect the jurisdiction of the Supreme Court and High Court under articles 32, 136, 226 and 227 of the constitution to secure disposal of the petitions before the Chairman or the Speaker, as the case may be".

(*ii*) in paragraph 8, sub-paragraph (1) for clause (d), the following shall be substituted, namely:—

(*d*) The procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6, including:—

(*i*) the receipt of petitions;

(*ii*) the objections to be complied with by the petitioner;

(*iii*) the resubmission of the petition after compliance with deficiencies; and

(*iv*) such other procedure for facilitating expeditious inquiry into the petition.

STATEMENT OF OBJECTS AND REASONS

The Constitution (52nd Amendment) Bill, 1985 was enacted to curb the political evil of defection while providing for disqualification of any elected Member of a House on grounds of defection.There various instances in the recent past wherein have been defections on a large scale have occurred in various legislatures resulting in applications being filed in accordance with the rules, before the Speaker, seeking disqualification of such elected members. Most such defections are from the opposition party to the ruling party whereby the number of elected Member in the House, in support of the ruling party increased. Instances wherein the aggrieved political party files an application before the Speaker for disqualifying such defecting elected members, and have been kept pending, for years, without any progress until the end of the Tenure of the House have been on the rise. There has been a criticism of such conduct of the Speaker for not acting expeditiously on such applications seeking disqualification, since continuance of such Members in the House would be in derogation of the intent and express provisions of the Tenth Schedule.

Article 361B bars disqualified Members from holding any remunerative political post consequent on disqualification, for the remaining of the tenure of the House, or until the next fresh elections. Therefore, a Member who consciously defects contrary to the intent of the Tenth Schedule, is thus rewarded with public office, pending final adjudication, and after final adjudication, is enabled to contest in the by-elections and be a Member of the very Legislature in the very same tenure, in which he is disqualified. The bar on re-election of such Member shall extend to remainder of the Tenure of the House or term.

The remedy of approaching the Courts seeking a direction of the Speaker to dispose of the said applications expeditiously and within a time frame have been rendered futile, in view of the *judicial dicta* limiting Court's interference only after the final decision is made by the Speaker.

It is therefore proposed to amend the paragraph 6 of the Tenth Schedule of the Constitution to provide for a mandatory time frame for the disposal of the petitions filed before the Chairman or Speaker of the House. Such mandatory time frame would ensure sustenance of the electors' faith in the democratic process of elections apart from upholding the majesty of the House. The time frame and the remedy for judicial redressal in case of inaction, would be consistent with the view of the Supreme Court as regards the power of the Speaker being of a "Tribunal" with judicial powers of adjudication and also the areas of judicial review under articles 32, 136, 226 and 227, held to be permissible *quia timet* of the proceedings of the Tenth Schedule.

This Bill Seeks to achieved the above objectives.

V. VIJAYASAI REDDY

SHUMSHER K. SHERIFF,
Secretary-General.

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